

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO**

In Re: * Case Number 04-38551
* Adversary Case Number 05-03274
Andrea S. Gallardo * Judge Richard L. Speer
* **MOTION TO REINSTATE
DISCHARGE**
*
Beau Harvey, Esq. (0078717)
* Counsel for Debtor
Harvey Law Office, Ltd.
* 520 Madison Avenue, Suite 405
Toledo, OH 43604
* 419-720-0400
* * *

NOW COMES the Debtor, Andrea S. Gallardo, by and through her legal counsel, and respectfully moves this Court for an order reinstating her Chapter 7 Discharge for the reasons more fully explained to the Memorandum in Support attached hereto.

WHEREFORE, Debtor respectfully requests that her discharge be reinstated.

Respectfully submitted,

/S/ B. Maximillion Harvey
B. Maximillion Harvey, Esq.
Counsel for Debtor
The Harvey Law Office, Ltd.
520 Madison Avenue, Suite 405
Toledo, OH 43604
419-720-0400

MEMORANDUM IN SUPPORT

On October 12, 2004, Ms. Adrea S. Gallardo filed a Chapter 7 Bankruptcy with this Court seeking relief from her creditors. On December 2, 2007, Ms. Gallardo appeared at her §341 Meeting of Creditors and at that time was notified of the Trustee's intention to seek turnover of her 2004 Federal tax refund. On December 6, 2004, Trustee Louis J. Yoppolo filed a Motion for Turnover. The motion directed Ms. Gallardo to turnover all portions of her Federal tax refund that was not exempt from turnover. Ms. Gallardo's initial Federal Tax refund indicates that she would receive a refund of \$3,205.

(Defendant's Exhibit 1)

After filing her return in January 2005, but prior to receiving her refund check, Ms. Gallardo received a 1099 Form for cancelled debt from her mortgage servicing lender in the amount of \$15,824. Ms. Gallardo sought the advice of her attorney, but received no response. Ms. Gallardo then received her 2004 tax refund check in the amount of \$3,205.

Ms. Gallardo states that she attempted to contact her attorney on several occasions to provide the refund check to him, but received no response. On August 25, 2005, Trustee Yoppolo filed an adversary complaint to revoke debtor's discharge. Again, Ms. Gallardo attempted to contact her attorney to no avail, but did contact Trustee Yoppolo. Trustee Yoppolo correctly indicated that since she was still represented by counsel that he could not discuss this matter with her.

On December 1, 2005, this honorable Court revoked Debtor's discharge for failure to respond to the Complaint and provide the funds from Debtor's 2004 tax refund as required. After receiving this notice, Ms. Gallardo again attempted to contact her attorney, and again received no response.

Ms. Gallardo retained the money from her tax refund knowing that she would have to file an amended tax return to accurately reflect the 1099 she received for Cancellation of Debt from her mortgage lender. After meeting with this attorney, Ms. Gallardo provided all of her tax refund from 2004 which currently is in this attorney's IOLTA trust account.

Ms. Gallardo filed her amended 2004 Federal Tax refund on April 19, 2006. The amended tax return correctly reflects the 1099 Cancelled Debt Income on line 21. (*Amended Return provided as Exhibit 2*) The amended return accurately states that Ms. Gallardo owes \$3,273 dollars from 2004, and she is not due a refund.

Ms. Gallardo has attempted to resolve this matter prior to her case being closed and her discharge revoked without success. However, she did not intend to waste this Court's time, nor that of Trustee Yoppolo. Ms. Gallardo's circumstance is a unique one in that she has made unsuccessful attempts at the proper resolution before seeking further legal advice. Also, it appears at this point that the Trustee will not have a claim to administer based upon the fact that there is no refund.

Therefore, for the aforementioned reasons, we respectfully request that the Court reinstate the discharge to Ms. Andrea S. Gallardo.

Respectfully submitted,

/S/ B. Maximillion Harvey
B. Maximillion Harvey, Esq.
Counsel for Debtor
The Harvey Law Office, Ltd.
520 Madison Avenue, Suite 405
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419-720-0400

NOTICE REQUIREMENT PURSUANT TO LBR 9013-1(a)

Please take notice that this Motion is being provided in accordance with Local Bar Rule 9013-1(a) which provides that any objection to this motion must be provided within 10 days, or such other time as specified by applicable Federal Rule of Bankruptcy Procedure or statute or as the Court may order, from the date of service as set for the on the certificate of service, if the relief sought is opposed, and that the Court is authorized to grant the relief requested without further notice unless a timely objection is filed.

CERTIFICATE OF SERVICE

The undersigned hereby certifies under penalties of perjury that I caused the foregoing to be served on April 26, 2007 electronically to: United States Trustee; Louis J. Yoppolo (lyoppolo@snhslaw.com), Chapter 7 Trustee; and by depositing the same in the U.S. Mail, in Toledo, Ohio with proper postage prepaid to the parties named below and attached hereto:

Ms. Andrea S. Gallardo
15904 Garfield Road
Wakeman, OH 44889

/S/ B. Maximillion Harvey
B. Maximillion Harvey, Esq.
Counsel for Debtor